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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	MM Docket No. 91-221
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	

To: The Commission

COMMENTS

Commonwealth Communications Services, Inc. ("Commonwealth"), pursuant to Section 1.415 of the Commission's Rules, hereby submits its Comments in response to the Notice of Proposed Rulemaking, FCC 92-209, released June 12, 1992 ("Notice"), in the above-referenced proceeding.

I. Introduction.

Commonwealth is the licensee of Television Station WHP-TV, Channel 21, Harrisburg, Pennsylvania. Television Station WHP-TV is a UHF CBS affiliate station located in the Harrisburg-York-Lancaster-Lebanon ADI, which Arbitron ranks as the 47th market. 1992 Broadcasting & Cable Market Place (formerly Broadcasting Yearbook).

Commonwealth built WHP-TV in 1953 and has operated the station since that time. In the past ten to fifteen years, Commonwealth has witnessed the transformation of the video marketplace from an environment in which broadcast television was the dominant source for video programming to one in which broadcast television is one of several popular video outlets competing for limited advertising revenues. As the licensee of a UHF station, Commonwealth has first-hand experience of this transformation's effect on UHF stations. In particular, during these years, the technical and financial difficulties associated with the ownership and operation of a UHF station were accentuated as the television industry, as a whole, was adversely affected by the increased competition from other video outlets, particularly cable television as a multi-channel competitor.

Based on this experience, Commonwealth urges the Commission to focus on and take steps to alleviate the problems confronting UHF television stations as they struggle for survival in today's video marketplace. Due to the increasing competitive difficulties experienced by UHF stations, Commonwealth supports any efforts by the Commission to foster the growth and development of UHF stations. Without such efforts, stand-alone UHF stations are headed down the same road as stand-alone AM stations. In the context of this proceeding, Commonwealth specifically advocates and supports the relaxation of the Contour Overlap ("Duopoly") Rule to allow UHF/UHF combinations in any circumstances. Commonwealth also suggests that the Commission allow VHF/UHF combinations where both stations are located in one of the top 30 markets and there will be six independently-owned television stations in the market after the acquisition, or where the UHF station is a "failed" station.

II. Overview of Current Television Industry.

As the Commission recognized in the Notice, over the past fifteen years the video marketplace has become a highly competitive environment with a multitude of sources of video programming. Notice, supra, at ¶ 3. In today's marketplace, traditional broadcast television, the once dominant source of video programming, is confronted with fierce competition from cable television and other sources of video programming. Id. at ¶ 4.

However, the competition faced by the broadcast television industry is not limited to a battle for viewing audiences but also one for limited advertising dollars. Unlike cable and other video media outlets, broadcast television is financed by the sale of advertising time without any added revenue generated by the viewers' direct payment. Federal Communications Commission, Office of Plans and Policy, Broadcast Television In A Multichannel Marketplace, 6 FCC Rcd 3996, 4004 (1991) [hereinafter, "OPP Report"]. Consequently, the success of a broadcast television station is directly related to its ability to attract large audiences in order to entice advertisers to spend their limited advertising dollars to purchase time on the station.

As cable and other competitors have grown in importance, they have siphoned away both viewers and advertising revenue from television stations. The effect has been particularly severe in recent years, when many advertisers have cut back their advertising expenditures. Veronis, Suhler & Associates, Inc., The Veronis, Suhler & Associates Communications Industry Forecast, p. 68 (6th ed., June 1992) [hereinafter "VSA Forecast"]. Not surprisingly, many broadcast television stations are struggling as a result. This is particularly the case for UHF stations, which generally have inferior signals and smaller audiences compared to VHF stations. Even though the profits for the television broadcast industry has declined in recent years, the number of commercial UHF stations have increased dramatically. OPP Report, 6 FCC Rcd at 4011. In May 1990, there where 546 commercial UHF stations, representing a 150 percent increase in the number of commercial UHF stations between 1980 and 1990. Id. This has obviously exacerbated the competitive difficulties UHF stations face.

In light of current conditions in the transformed video marketplace, the Commission should consider a whole range of efforts to ensure that UHF stations do not share the fate of AM radio stations. In the context of this proceeding, the Commission should and can assist UHF stations in their struggle to remain in the marketplace by relaxing its Television Duopoly Rule to allow the common ownership, control and/or operation of two television stations with overlapping contours provided that the two stations are UHF stations.

III. Relaxation of the Television Duopoly Rule Will Not Permit Undue Concentration of Economic Power.

The Commission's multiple ownership rules, including the Television Duopoly Rule, was intended to "promote maximum diversification of program and service viewpoints and to prevent undue concentration of economic power contrary to the public interest." Report & Order, 45 FCC 1476, 1476-1477 (1964), on reconsideration, 3 RR 2d 1554 (1964). In adopting the current version of the Television Duopoly Rule, the Commission noted at that time, "in many areas of the country, ... Grade B television signals provide the only available service or, in any event, a service which many viewers have been willing to put up relatively complex antennas to get." Id. at 1484. This characterization no longer accurately describes the video marketplace. Viewers now have access to far more broadcast television stations than was the case in 1964. Notice, supra, at ¶ 17. In addition, several alternative video outlets, such as cable television, home satellite dishes, videocassettes, video games and computers, wireless cable systems, and satellite master antenna television have appeared on the scene. OPP Report, 6 FCC Rcd at 4009. In light of these substantial changes in the video marketplace, the Commission's rules should be modified to prevent only those threats of undue economic concentration or adverse impacts on diversity which are "real" possibilities in today's world.[1]

IV. The Duopoly Rule Should Be Relaxed To Permit Ownership of Two UHF Stations With Overlapping Contours.

Although Commonwealth supports relaxation of the Television Duopoly Rule, it does not advocate the total elimination of the rule. Instead, Commonwealth advocates the relaxation of the Television Duopoly Rule in a manner which will allow those television stations most at risk of not surviving in today's video marketplace to be able to compete more effectively with other television stations in their local market and the alternative sources of video programming present in the video marketplace. Commonwealth considers UHF stations, in general, to be the stations most at risk in the transformed video marketplace for three reasons.

First, due to the significant increase in the number of commercial UHF stations over the last decade, there are more stations vying for even fewer

[1] The Commission followed this reasoning in its recent revision of its radio rules and policies. See Report & Order, 70 RR 2d 903 (1992).

advertising dollars. On average, there is more than one UHF station to a market. See Table 1. As a result, several licensees are competing for the same limited advertising dollars. In turn, each UHF station in the market can only obtain a limited amount of advertising revenues. Notably, average profits for both UHF independents and affiliates declined over the latter portion of the 1980s. OPP Report, 6 FCC Rcd at 4025.

Second, in light of the fact that UHF stations historically have not been able to reap the level of profits gained by competing VHF stations due to the technical distinctions between the two services -- increased technical expenditures, UHF's lower quality of reception, and the limited geographic reach of UHF's signal -- UHF stations are also hampered in their efforts to compete with alternative sources of video programming. Although cable carriage may allow UHF stations to overcome certain technical handicaps, UHF stations still must be innovative and develop ways to attract viewers from the alternative video outlets and other entertainment sources which compete with viewer time. OPP Report, 6 FCC Rcd at 4012.

Third, contrary to some optimistic predictions, broadcast losses will not necessarily end due to the slowing of cable expansion. See VSA Forecast, supra, at 69. Cable is only one of several alternative video programming sources competing with broadcast television in today's video marketplace. Specifically, there are several developing technologies, such as fiber optic delivery of cable signals, video compression, high definition television, interactive services, and signal encryption, which are likely to increase the competition experienced by the broadcast television industry. OPP Report, 6 FCC Rcd at 4042. The VSA Forecast claims that "a central premise of this positive advertising forecast is that the worst is over for the networks in terms of competition for viewers." Id. at 74. In light of the numerous developing technologies, however, including those that will benefit cable in particular (e.g., fiber optics), it is more likely that competition from both cable and other video sources will continue to grow. Consequently, relief from competition does not appear to be in sight.

With a relaxed duopoly rule permitting combinations between these at risk stations, the UHF stations will be able to realize economies of scale through joint operation. As a result, UHF stations will be able to devote more resources to the production of local programming aimed at distinguishing themselves from their competitors. In addition, there will not be a threat of undue economic concentration in light of the numerous video outlets present in the marketplace.

V. Relaxation of the Duopoly Rule For VHF Stations Should Be Allowed In Certain Circumstances.

Although the broadcast television industry, in general, has been affected by the transformation of the video marketplace, VHF stations have not been and will not be affected as adversely as the UHF stations. On average, in recent years VHF stations, whether independent or affiliate, have remained more profitable than UHF stations. Stand-alone VHF stations cannot at this point be considered "at risk" in the same way as stand-alone UHF stations are.[2]

[2] In the Notice, the Commission requested comments as to whether a UHF/VHF distinction would be feasible in light of the "potential" transition to Advanced Television Systems (ATV). Commonwealth takes the position that the transition to ATV should not

Commonwealth recognizes that VHF stations may play a role in the preservation of the UHF stations which are currently "at risk." If a UHF station is allowed to combine with a profitable VHF station in the market, then that UHF station could benefit from the VHF station's profitable operation and become a financially healthier station. However, there remains the concern of avoiding undue concentration of economic power in local markets due to the financial dominance of VHF stations. In light of this concern, Commonwealth recommends that a licensee of a VHF station be permitted to acquire an ownership interest in a UHF station with an overlapping Grade B Contour only if (a) the stations are located in the top 30 markets and there will be six independently-owned television stations remaining in the market after the acquisition[3]; or (b) the UHF station is a "failed" station (as defined and interpreted under the Commission's "one-to-a-market" waiver policy). The Commission has demonstrated the utility of such a bright-line policy in connection

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be relevant in determining what modification of the duopoly rule is appropriate. First, the transition to ATV is not yet definitive and, therefore, any expected benefits from such transition -- for example, use of UHF channels -- at this point are speculative, as well as remote in time. Second, even if ATV is adopted, the transition to such systems would be very expensive. Consequently, unless UHF stations are allowed to compete more effectively in today's video marketplace through the Commission's relaxation of the duopoly rule, it is doubtful that those UHF stations operating on the eve of the transition will be able to afford the equipment and programming necessary to make the transition to ATV. Third, it has not been demonstrated that the transition to ATV will eliminate the financial gap between the UHF and VHF stations.

[3] The requirement that six independently-owned television stations remain in the market post-combination is a reasonable limitation since, as illustrated in Table 1, at the beginning of 1991 the top 30 markets had an average of ten television stations per market.

with its "one-to-a-market" rule.

Conclusion

For the reasons given above, Commonwealth supports the relaxation of the Television Contour Overlap Rule. Commonwealth specifically urges the Commission to relax the rule so as to allow UHF/UHF combinations, in general, and UHF/VHF combinations, under certain circumstances, despite overlapping contours.

Respectfully submitted,

COMMONWEALTH COMMUNICATIONS SERVICES, INC.

By: M. David Dotweiler, IV
Chief Executive Officer

Box 1505
3300 N. Sixth Street
Harrisburg, PA 17105

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TABLE 1

Average Number of Television Stations In Markets
According to ADI Market Rankings
(As of 12/31/90)

ADI Market Ranks	Number of VHF Stations	Number of UHF Stations	Average Number of Stations
1 - 30	4	6	10
31 - 50	3	4	7
51 - 75	3	3	6
76 - 100	2	3	5
101 - 150	2	2	4
151 +	1	1	2

Source: Investing in Television: 1991 Market Guide (BIA Publications, Inc., 1991)